

HAMPTON PLANNING BOARD – MINUTES  
December 21, 2005 – 7:00 PM

**PRESENT:** Tracy Emerick, Chairman  
Tom Higgins, Vice Chairman  
Fran McMahon, Clerk  
Cliff Pratt, Selectman  
Keith Lessard  
Bob Viviano  
Tom Gillick  
James Steffen, Town Planner  
Bill Bilodeau, Alternate

**ABSENT:**

Chairman Emerick began the meeting at 7:00 PM by introducing the Board members. Mr. Bilodeau sat for Mr. Lessard at this time. Mr. Bilodeau led the Pledge of Allegiance to the flag.

**I. CONTINUATIONS**

Maplecroft Building & Development LLC                      5-38SITE  
Site Plan Review at  
18-20 Keefe Avenue  
Map 290 Lots 68 & 69  
Waiver from Subdivision Regulations Section VII.C.5 (Peak rate of runoff)  
Owner of Record: Twenty Keefe Ave Realty Trust, John Kopka III

a. Jones & Beach Engineers, Inc.                                      5-39SP  
Special Permit at  
20 Keefe Avenue  
Map 290 Lots 68 & 69  
Owner of Record: Twenty Keefe Ave Realty Trust, John Kopka

Chairman Emerick announced that Jones & Beach Engineers has requested continuation of these applications until the January 18, 2006 meeting of the Planning Board, so that the plans can be revised to include comments received from departmental review.

**MOVED** by Mr. Gillick to grant the requested continuations.

**SECOND** by Mr. Bilodeau

**VOTE:** 7-0-0

**MOTION PASSED**

**II. ZONING AMENDMENT CHANGES**

Chairman Emerick announced that the proposed Zoning Ordinance amendments will have a Public Hearing at the January 4, 2006 meeting.

### **III. ATTENDING TO BE HEARD**

Roger Elkus  
Change of Use at  
61 High Street  
Map 161 Lot 17  
Owner of Record: Frank Catapano

5-53CU

Roger Elkus presented this request. He indicated that he, as a principal of GMC Limited Partnership, is proposing to take over the former 7-11 store to operate a bakery/café. This would be an additional location of "Me & Ollie's". Mr. Elkus indicated that they specialize in baked goods. There would be a breakfast menu of coffee and baked goods, and a lunch menu of soups, salads and sandwiches. He indicated that they have won a "Best Bread in New Hampshire" award.

#### **BOARD**

Mr. Pratt asked what the hours of the business would be. Mr. Elkus said the hours would be approximately 7 AM to 7 PM in the winter and 7 AM to 8 PM in the summer.

The Board asked where the baking would take place. Mr. Elkus indicated the primary baking would be done at their Portsmouth location. There will be a convection oven at the Hampton location.

**MOVED** by Mr. Pratt to grant the change of use at 61 High Street, Map 161, Lot 17.

**SECOND** by Mr. McMahon

**VOTE:** 7-0-0

**MOTION PASSED**

Mr. Lessard assumed his seat on the Board at this time, and Mr. Bilodeau stepped down.

### **III. CONTINUED PUBLIC HEARINGS**

Jane B Gallagher  
Special Permit to Impact Wetlands Conservation District at  
31 Harbor Road  
Map 295 Lot 62  
Owner of Record: Jane B Gallagher

SP5-4

Fred Sprague, Ames MSC of Portsmouth, presented this application on behalf of the applicant. Justin Gallagher, the applicant's son, was also present. Mr. Sprague described the proposed work. He indicated the purpose of the fill is to protect the concrete block foundation from tidal surge. He described the activity before the Conservation Commission and the Planning Board. There will be 925 square feet of disturbance of the Wetlands Conservation District. The plans indicate the depth of fill at various points.

He indicated the intended flow of water drainage. Mr. Sprague also indicated that a previously existing fence was to be replaced. They are requesting an 8-foot fence but don't know if that will comply with the Town's ordinances.

#### BOARD

The Board asked for a description of the "disturbance". Mr. Sprague said this would involve digging and vegetation removal.

Mr. McMahon asked what type of material would be used for the slope, whose property it would be on, and who would be responsible for maintaining it.

Mr. Gallagher indicated the Town and the Gallaghers would maintain the area.

The Board asked for a review of the Conservation Commission's comments. Mr. Steffen reviewed these.

There was a discussion of the fence height with respect to Town ordinances and deed restrictions.

#### PUBLIC

Ron Dube, 35 Harbor Road, said he hoped the disturbance would not affect a surveyor's marker in the stone wall. Mr. Dube referred to the fence. He said there is no other fence in the area that is 8 feet tall. He indicated that the fence would create a visibility problem. Mr. Dube also indicated that if the applicant parked in front of the garage, her car would stick out onto Harbor Road.

#### BOARD

Mr. Sprague indicated they have no intention of disturbing the surveyor's marker. He indicated that the fence was discussed previously.

The Board indicated that the fence in the Wetland buffer is at issue in this application.

This was a plan that came before the Board previously and was not satisfactory.

Mr. Viviano asked if there is an existing fence. Mr. Gallagher said there was a fence until 2 months ago when it was removed for the abutter to do their work.

Mr. Steffen described the changes indicated on the new plan as compared to the previous plan. The Board discussed the changes.

Mr. Gillick asked that a condition of any approval include review of the sight lines by the Building Inspector and the Police Department to determine if they are appropriate for safety.

Mr. Steffen indicated that the Conservation Commission's concern was the height of the fence, not its existence.

**MOVED** by Mr. Pratt to grant the Special Permit at 31 Harbor Road, Map 295 Lot 62, with the following stipulations:

- Review of the sight lines for the proposed fence by the Building Inspector and the Police Department to determine if they are appropriate for safety.
- There is a State DES permit at the property for future development and any excess fill from those excavations will be removed from the site.
- There will be no change in elevation from the plan dated October 25, 2005 by Ames MSC, project #03224.
- The proposed fence will meet the Town Building Inspector's requirements with respect to its height.
- The driveway will be a permeable surface.
- Any deck will be open above and below allowing for grass to grow beneath.
- Lawn care must follow the guidelines set forth in the Shoreland Protection Act. Grass clippings will not be placed in the buffer or in the wetlands.
- Proper erosion control will be in place before construction begins and remain in place until the area is stabilized and removed after construction is complete. (Silt fence and hay bales)
- The buffer should remain undisturbed to the degree possible in the process of construction and elevations not be changed. No additional fill is allowed. No change in elevation is allowed using existing fill.
- Spot elevation grades shall be submitted prior to construction and upon completion.
- The Conservation Commission will be notified in writing upon commencement and completion of the project.
- The rock marker in the wall which marks the corner of this property and Mr. Dube's to the West will remain untouched.
- The height of the repaired sea wall will not exceed the height of the walls to either side of this property.
- There are to be no additional structures such as sheds, swimming pools, gazebos, patios or other sealed surface in the buffer, other than that shown on the plan. A new Special Permit is required for the erection of any structure in the buffer.

**SECOND** by Mr. Gillick

**VOTE:** 7-0-0

**MOTION PASSED**

Elaine & Fred Ayotte  
Site Plan Review at  
465 Ocean Boulevard  
Map 266 Lot 31  
Owner of Record: Elaine & Fred Ayotte

SP5-02

***Jurisdiction Accepted: September 7, 2005***

Peter Saari, Attorney, Joe Coronati, Jones & Beach Engineers, and Dave White, White Architects. Mr. Coronati stated that since the last meeting they have been working on resolving outstanding issues. He indicated they are down to a few items. He described the changes to the plans. A 3-foot eco-paver walkway has been added. There have been changes to the parking layout. A handicap parking space has been added, as well as a handicap ramp. A trash room has been labeled.

Mr. White described other changes made. There is a 3-foot high wall on the westerly side of the building to block headlights. The garage door has been removed. Sensor lights have been added to the walkway.

**BOARD**

Mr. Lessard asked how visitors would announce themselves. Mr. White said there would be an intercom at the front entrance.

The interior floor-to-floor height of the garage is 11 feet. The garage opening will be 7'6" minimum. The ceiling will be 8 ½ feet high.

Parking was discussed. Mr. White said that assigning of spaces will be left up to the condominium association. Mr. Lessard said the Board will require assigned parking.

The handicap parking space was discussed. Mr. McMahon asked for clarification of the ADA compliance requirement. Mr. White said ADA has nothing to do with a private residential development, however, Building Codes and the Federal Fair Housing Act does. He explained that with 4 units or more there must be an accessible unit, and with 20 units or more, handicap units are required.

There was a comment that the postal carrier will have walk through the garage to deliver the mail.

**PUBLIC**

Tom Ferrini, Attorney from Wyskiel, Boc, Tillinghast & Bolduc, said the applicant has responded too many of his client's concerns, however, there are still multiple concerns.

Bruce Scammon, Emmanuel Engineering, stated there are 4 items he wished to discuss:

- Lighting plan – they are concerned about brightness of lights at the property line.
- A utility pole is proposed to be relocated onto the Seabreeze property. They would like to see it on the applicant's property.
- Changes to drainage under the building bring up a problem of the definition of "water table" and whether it is the seasonal high water table. They are concerned it

will pour water onto the parking lot seasonally, and snowmelt will flow onto the lot.

- Snow storage space is reduced by adding the walkway, compounding the snow storage problem.

Status of items presented previously is as follows:

1. Lighting – see above
2. FEMA flood map– Emmanuel doesn't agree with Ambit.
3. There are still problems with water flow into the marsh and backup onto the properties.
4. Parking - they still believe there should be 11 spaces.
5. ADA - resolved
6. Van accessibility –resolved
7. Snow load increase onto Seabreeze property - Emmanuel doesn't agree with JSN.
8. Fire protection – There is no documentation in the file of the resolution.
9. Still waiting for Fire Protection Engineer report.
10. There has been no action on treatment of water coming from inside of garage.
11. Off-site unloading. There is concern larger trucks will park on the sidewalk. Emmanuel still believes applicant needs a waiver.
12. They would like a wetland scientist's report or stamp on plan, stating that the property is not in wetlands.
- 13-14-15. Previously discussed.
16. Trickle effect of snow coming off roof will create icing problems.
17. Resolved (utility pole)
18. Resolved (wall)

His final conclusion is that there are other possible solutions, such as a single walkway shared with Sea breeze and a drainage easement (daylight a pipe across parking lot for drainage to rear of property).

Mr. Ferrini commented that Seabreeze Condominium would like to work with this applicant to try to solve the problems together. He believes this is a high impact development on expensive property. He doesn't believe that the application is complete.

## BOARD

Mr. Coronati said the lighting will be on sensors so it won't be lit all the time. The utility pole could stay where it is if Seabreeze wants. With respect to the icing problem, the site today is 72% impervious. On the new building it will be 73% impervious. The whole project slopes to the marsh. In theory, no storm water system would be needed. He feels the storm water issues are improved by the proposed system. Snow storage issues are reduced since it will involve shoveling a sidewalk rather than plowing a driveway.

The building is proposed to be sprinkled.

Mr. Steffen said there was a letter received from the Fire Department that afternoon. The Fire Department is satisfied with the current project. He also said Ambit Engineering has provided comments that afternoon. The only significant item is a pipe location in the drainage system. Mr. Steffen indicated that most of the other issues have been addressed. Outstanding is review of the building design plans by the Hampton Beach Area Commission. If the Board saw fit to approve the application, that could be a condition of approval.

He commented that in the Zoning Ordinance, Article 6 would have to be complied with in respect to building in a flood zone.

Ambit Engineering's concern about the back flow into the drainage system was discussed. Mr. Coronati indicated that the outfall on this project was higher than many other locations on the beach. He believes that the worst case would be 6 inches of water in the garage.

A decorative fence is not on the plans. Mr. Lessard asked how much snow will be cast off onto the next building. Mr. White read a letter from JSN Associates (structural engineers). The snow draft effect will be negligible to the South and to the North.

The lighting plan was again discussed. Mr. White explained the brightness at different points.

Mr. White said they would be willing to discuss issues with the abutter. It appears that the utility pole and the sidewalk could possibly be changed.

With respect to the Hampton Beach Area Commission review, Mr. White stated that a pitched roof would increase the height of the building over the maximum height in the Zoning Ordinance.

**MOVED** by Mr. Higgins to continue the application until the January 18<sup>th</sup> meeting of the Planning Board for the following:

- Review of the Consulting Engineer's report.
- Review by the Hampton Beach Area Commission.

**SECOND** by Mr. Lessard

**VOTE:** 7-0-0

**MOTION PASSED**

#### **NEW PUBLIC HEARINGS**

Seaview at Hampton, LLC                      5-52SP  
Special Permit to Impact Wetlands Conservation District at  
24 Harbor Road  
Map 295 Lot 64

Owner of Record: Seaview at Hampton LLC

Joe Coronati, Jones & Beach Engineering, represented this applicant. The owner failed to appear. Mr. Coronati stated there was a meeting to discuss drainage issues. He went to the Conservation Commission and talked with the State DES about these issues. They wanted to know where the transformer fell in relation to the wetland buffer as well as the fence. The transformer pad is within the 50-foot buffer. Unitil, Ellen Goethel of the Conservation Commission, Jamie Steffen, Jane Gallagher, an abutter and Mr. Coronati all met on site recently. Unitil consolidated 2 transformers and located them in a more accessible location. The 29 feet of fence will be removed, based on the Conservation Commission's request. The applicant has agreed to put in buffer plantings to mitigate the effect of having the transformer in the wetland. There is a signed agreement with the abutter (Gallagher) to install fence along her property line.

## BOARD

Chairman Emerick asked if this was a permit to do work that is already done. Mr. Coronati said the riprap on the end of the wall is a proposed change. Removal of the fence is up to Board.

The Board discussed the construction and actions that had taken place without permits.

Mr. Pratt asked if enough fencing would be removed from the right-of-way to allow people to access the beach with boats. Mr. Coronati said 29 feet of fence will be removed to allow access. If the entire fence is removed he believes there will be a safety issue relative to the riprap creating liability for the condominium association.

## PUBLIC

Jack Kavanagh, 14 Duston Avenue, asked why a fence was put up on a public right-of-way. He doesn't believe anything can be put in a public right-of-way without a public hearing.

There was discussion of whether the utility would need an easement to place a transformer in the Town right-of-way.

Linda Gebhart, 4 Bailey Avenue, stated she objects to the location of the transformer in the 50-foot buffer. She also is opposed to the fence, since it eliminates the beach view remaining. The marsh area that was destroyed has not been replanted. She asked the Planning Board to consider that Seaview has disregarded the Planning Board and the abutters.

John Gebhart, 4 Bailey Avenue, said he wanted to discuss the fence in the public right-of-way. He objects to the fact that the fence was erected in the first place and is insulted that it went up in public right-of-way.



## BOARD

Mr. Lessard asked if we needed to have our engineer go down to see what complies with the plans. Mr. Viviano and Mr. Higgins agreed that an engineer should compare the site plan approved with what has been done. The current charge to Ambit Engineering is to review utilities and

There was discussion amongst the Board as to how to address the issues.

Mr. Gillick asked what the board had approved. Mr. Steffen said it approved a site plan for 21 condominium units. Mr. Gillick asked if the Board had a right to ask the Building Inspector to place a cease-and-desist on the site until such time as all outstanding questions are resolved. He would like to have a report by next meeting on differences between the approved site plan and what has been built.

**MOVED** by Mr. Gillick to ask the Building Inspector, as enforcement officer, to have the site inspected to determine if work has been done in accordance with the approved site plan. If it is necessary for the Building Inspector to hire an engineer, he is authorized to do so. He will then provide a report to the Planning Board on January 4<sup>th</sup> as to his recommendation. The application is continued to that date.

**SECOND** by Mr. Lessard

The Board will abide by the recommendations of the Building Inspector.

**VOTE:** 7-0-0

**MOTION PASSED**

**MOVED** by Mr. Higgins to ask the applicant to remove the fence immediately.

**SECOND:** There was no second to this motion.

Diane Gordon

Minor Lot Line Adjustment at

18 Huckleberry Lane

Map 98 Lot 41

Waiver from Subdivision Regulations Section V.E (Detailed Plans)

Owner of Record: Diane Gordon

Bernard Christopher, Builder, and Diane Gordon, Applicant, presented this application. Mr. Christopher described the course of events in building a new home for this applicant. The problem resulted from a violation of setbacks. The applicant has been granted variances for the nonconformities on lot A. The new house is being built on lot B.

## BOARD

The Board asked for clarification of the lot line adjustment requested.

## PUBLIC

No comments

**BOARD**

**MOVED** by Mr. Pratt to grant the waiver from Subdivision Regulations Section V.E (Detailed Plans)

**SECOND** by Mr. Lessard

**VOTE:** 7-0-0

**MOTION PASSED**

**MOVED** by Mr. Pratt to grant the Minor Lot Line Adjustment at 18 Huckleberry Lane, Map 98, Lot 41

**SECOND** by Mr. Gillick

**VOTE:** 7-0-0

**MOTION PASSED**

**V. CONSIDERATION OF MINUTES of December 7, 2005**

Page 1 – Withdrawals - remove the sentence regarding zoning changes

Page 6 - Richmond Suites – add “one legal nonconforming parking space”

Page 10 – Pond Side – Board – add “Mr. Higgins asked why the strip of land with access to the back went with Lot 3 and why the lot in back went with Lot 3 and not with Lot 1. The response was that the owner wanted access from the road on Lot 3 and wanted the view from the back.”

**MOVED** by Mr. Lessard to accept the minutes as amended.

**SECOND** by Mr. Viviano

**VOTE:** 7-0-0

**MOTION PASSED**

Mr. Steffen provided draft minutes for the workshop session held prior to the public meeting on December 7, 2005. These were reviewed.

**MOVED** by Mr. Lessard to accept the workshop minutes as written.

**SECOND** by Mr. Higgins

**VOTE:** 6-0-1

**MOTION PASSED**

**VI. CORRESPONDENCE**

Mr. Steffen indicated that there are 2 petitions for Zoning Ordinance changes:

- 1) Adopt an Interim Growth Management Ordinance.
- 2) Rezone from Residence AA to Industrial a portion of Tax map 51 Lot 3.

**MOVED** by Mr. Pratt to adjourn.

**SECOND** by Mr. Gillick

**VOTE:** 7-0-0

**MOTION PASSED**

Meeting adjourned at 9:36 PM.

Respectfully Submitted,  
Barbara Renaud  
Planning Board Administrative Assistant

2/3/2006